

**IN THE COURT OF APPEALS,
DIVISION ONE
STATE OF ARIZONA**

BARBARA LAWALL, in her official capacity as Pima County Attorney,)	
)	Court of Appeals, Division One
)	1 CA-CV 14-0367
Appellant,)	
)	Maricopa County Superior Court No.
vs.)	CV2013-016013
)	
R.R. ROBERTSON, L.L.C., an Arizona)	
limited liability company, doing business as)	
R3 Investigations; RICHARD R.)	
ROBERTSON; and CHRISTOPHER)	
DUPONT.)	
)	
Appellees.)	
)	
)	
)	
)	
)	
)	

**AMICUS CURIAE BRIEF OF
THE ARIZONA PROSECUTING ATTORNEYS' ADVISORY COUNCIL
IN SUPPORT OF APPELLANT, PIMA COUNTY ATTORNEY**

ELIZABETH ORTIZ, #012838
Executive Director
Arizona Prosecuting Attorneys'
Advisory Council
1951 West Camelback Road, Suite 202
Phoenix, Arizona 85015-3407
(602) 542-7222 / FAX (602) 274-4215
Elizabeth.Ortiz@apaac.az.gov
Attorney for Amicus Curiae

TABLE OF CONTENTS

	<u>PAGE</u>
TABLE OF CASES AND AUTHORITIES	iii
INTRODUCTION.....	1
ARGUMENT.....	2
CONCLUSION.....	3

STATUTES

PAGE

A.R.S. § 39-121.03 (A)	3
A.R.S. § 39-121.03 (C)	3

I. INTRODUCTION

The Arizona Prosecuting Attorneys' Advisory Council ("APAAC") represents more than 800 state, county, and municipal prosecutors. Arizona prosecution offices range in size from a single part-time contract attorney in a small municipality, to the three-lawyer Greenlee County Attorney's Office, to the over 300 prosecutors in Maricopa County.

APAAC's primary mission is to provide training along with a variety of other services to and on behalf of prosecutors. APAAC is the liaison for prosecutors with the legislature and the courts, advocating for prosecutorial interests on changes to statutes or procedural rules. On occasion, APAAC submits *amicus curiae* briefs in state or federal appellate courts on issues of significant concern to prosecutors.

APAAC has chosen to file this *amicus curiae* brief because of the looming detrimental financial impact on prosecution offices across Arizona if the trial court's ruling that the voluminous criminal case data which appellees R.R. Robertson, L.L.C. and Richard R. Robertson (collectively, "R3") sought from the Pima County Attorney's Office ("PCAO") was for a non-commercial purpose is allowed to stand.

II. ARGUMENT

This appeal stems from two public record requests that R3 submitted to PCAO for nearly twelve years of felony case data. (ROA 30; ROA 39). R3 caters to criminal-defense attorneys and their clients, providing them with charging and sentencing analysis based on data from other criminal cases. (ROA 15; ROA 30; ROA 39). The idea of utilizing this criminal case data has caught on with at least one other person, the Appellee Christopher Dupont.

Over time, R3 has expanded this ongoing public records request to a second and third county and touts its intention to take it statewide. The R3 website prominently advertises “Exclusive Statewide Charging and Sentencing Analysis” as a service to its clients. <http://r3investigations.com/> The data necessary to provide its clients with such analysis lies within the state’s prosecution offices. Annually, the State of Arizona carries approximately 50,000 active criminal cases at both the misdemeanor and felony levels. <http://www.azcourts.gov/Portals/30/2013DR/SuperiorCourt.pdf#page=3> In the past four years, R3 has obtained public records for its charging and sentencing analyses from the Arizona Supreme Court, the Maricopa County Superior Court, the Maricopa County Attorney’s Office and the Pinal County Attorney’s Office. (ROA 15).

As PCAO has noted, complying with public-records requests costs money, thus the policy in Arizona is that taxpayers should bear those costs only if the records are put to a noncommercial use. If a request is for a “commercial purpose,” the party making the request must bear those costs. See A.R.S. §39-121.03(A). Indeed, this policy is so strong that treble damages may be awarded even if the record is obtained for one stated commercial purpose but is used for another. A.R.S. §39-121.03(C).

To truly meet the advertised offering of statewide data and given the geographical expansion over time of the records requests, together with Dupont (and potentially others like him) jumping on the bandwagon, there is good reason to conclude that this is a growth industry and many more requests are in the offing to the state’s smaller, resource poor counties. In counties with a small staff and less than state-of-the-art technology available, the burden for producing the historical records for the totality of the criminal practice in that county for the substantial number of years reflecting in the existing requests will likely become especially labor intensive.

III. CONCLUSION

Based on both the foregoing and the legal analysis set forth in PCAO’s brief, APAAC respectfully urges this Court to vacate both the summary judgment and award of attorney’s fees in R3’s favor, and remand this case with directions to

enter summary judgment in favor of PCAO. In addition, APAAC respectfully requests this Court to vacate the summary judgment in DuPont's favor and remand the case for further proceedings on whether DuPont's request was for a "commercial purpose" under the Use Clause.

RESPECTFULLY SUBMITTED this 31st day of December, 2014.

By: /s/
Elizabeth Ortiz,
Executive Director
Arizona Prosecuting Attorneys'
Advisory Council
Attorney for Amicus Curiae